IN THE IOWA DISTRICT COURT IN AND FOR BUTLER COUNTY

STATE OF IOWA,

Plaintiff,

vs

MARK DARYL BECKER,

Defendant.

Criminal No. FECR008809

STATE'S APPLICATION FOR RULING ON ADMISSIBILITY OF EVIDENCE

COMES NOW the State of Iowa and files application pursuant to I.R.Evid. 5.104 for pre-trial determination of the admissibility certain evidentiary matters.

While the Defense has not disclosed its witnesses or filed a witness list, the State anticipates that the defense may attempt call of a number of non-occurrence (persons having first-hand knowledge of facts occurring on or about the time of alleged crime), non-character fact witnesses whose testimony will be asserted to be relevant to the defenses of insanity and / or diminished capacity. These witnesses, the State believes, will be called to recount various facts about Defendant's entire past history that the Defendant presumably will be asserting is relevant to the insanity defense. The State hereby asserts that this type of evidence must be carefully examined by the Court for relevance and unfair prejudice and excluded or limited appropriately for the reasons set forth in Section I, below.

The State further moves to limit or exclude the other matters set forth in Section II, below.

I. "Fact Testimony" Concerning the Insanity Defense

The State objects to the admission of evidence from defense fact witness concerning facts which, if relevant at all, are only relevant to the extent that a defense expert may testify that he or she relied upon such facts as a basis for formulating an opinion which is itself relevant and admissible. Such facts include the following, by category:

1. Evidence by any fact witness concerning the Defendant's past unusual behaviors or statements of any kind and any evidence of specific instances of such behaviors or statements.

2. Evidence by any fact witness that the Defendant was getting psychological or psychiatric counseling, any opinion offered by any fact witness that the witness thought or suggested that the Defendant should get such counseling, or any evidence of specific instances of conduct supporting any such opinion.

There are a number of legal justifications for excluding such evidence, including the following:

A. Irrelevance

None of the above-referenced fact testimony is directly relevant to any issue in the case. The Defendant will have the burden of establishing either of two elements as to his insanity defense: (1) That at the time of the crime he was incapable of knowing the nature and quality of his acts, or (2) that at the time of the crime he was incapable of distinguishing between right and wrong in relation to these acts. See Iowa Code §701.4; Iowa Uniform Criminal Jury Instruction No. 200.11. None of the types of evidence sought to be excluded, in the absence of special psychological expertise and training, has the tendency to make the existence of either element of the insanity

defense more or less probable. See I.R.Evid. 5.401.

The significance of the kinds of facts which may be sought to be substantively admitted (as opposed to testified to by an expert as the basis of an admissible opinion) can only be properly understood and explained by a trained psychiatric or psychological expert within the narrow confines of the legal definition of insanity.[1] The lay juror is unable to connect the issues to be decided – Defendant's capacity of knowing the nature and quality of the act or of distinguishing, right and wrong – with anecdotal fact witness testimony, such as the Defendant's odd behaviors, sleep disruption or any number of the other specified historical facts which may have occurred months or years before the crime was committed. Such facts have meaning in the context of this case, if any, only to the trained expert, and then only to the extent such facts are reasonably relied upon by experts in the field and were actually relied upon the expert in question as basis for formulating an admissible opinion.

The State does not here seek to exclude defense experts from relying upon or testifying about such facts to the extent permitted under the rules of evidence governing expert testimony. Expert witnesses are permitted to express opinions in areas requiring special knowledge and training where their expertise will help the jury better understand the issues in question. See I.R.Evid. 7.702. To the extent reasonably relied upon by experts in the field, and actually relied upon by the expert to formulate

[1]Because only an expert can ascertain whether such facts do actually carry any significance, substantive admission of such evidence will tend to confuse the jury. See Paragraph "6" below

his or her opinion, experts may rely on facts which would not otherwise be admissible. I.R.Evid. 5.703.

B. Confusion of the Jury / Unfair Prejudice to the State / Cumulative

The substantive admission of the kinds of evidence identified in paragraphs 1 through 4, above, would create jury confusion, invite misuse of the evidence by the jury and unfairly prejudice to the State. Thus it should be excluded or limited pursuant to I.R.Evid. 5.403.

As discussed above, any evidence proffered by the defense on the sanity issue must be relevant to Defendant's capacity to know the nature and quality of his acts on June 24, 2009 or to distinguish between right and wrong in relation to those acts. Because the facts and lay opinions sought to be excluded bear no relationship to these narrow legal issues their admission would create juror confusion on the critical issue of the legal standard required for a finding of legal insanity and would tend to inspire sympathy for the defendant, thus substantially and unfairly prejudicing the State.

Mental illness is not equivalent to legal insanity. Other historical facts sought to be excluded have no logical connection (relevance) to the elements of insanity. The admission of such facts necessitates a legal conclusion (relevance) that such a connection does exist.[2] This in turn could lead the jury to conclude that a person who is "mentally ill" or "has serious mental problems" meets the legal definition of insanity.

[2] This is just another way of saying that apparently insignificant (irrelevant) facts may have some significance, but only to a qualified expert whose testimony is helpful to the determination of fact in issue. I.R.Evid. 5.701(b). Such evidence is only admissible in the context of an expert's opinion, and not substantively because of it tendency to be misunderstood or misused by a jury.

This is an incorrect and improper basis for a jury to decide the sanity issue since being mentally ill, having "something wrong" with a person, or having had unfortunate life circumstances do not establish the defense of insanity. These type of "knee-jerk" reactions and improper conclusions evoked by the admission of the subject evidence are unfairly prejudicial to the State.

In addition to confusing the central legal issues of insanity, the evidence sought to be excluded could be collectively characterized as the Defendant's "life story," and is likely to consist of largely pathetic facts and circumstances. Whether intended or not, evidence which may evoke jury sympathy may be excluded where its prejudicial effect is outweighed by any relevance. I R.Evid. 5. 403. The risk of unfair prejudice is heightened in this case by the fact that the evidence is to be delivered by friends and family of the Defendant, who may tend to deliver such the testimony in an emotionally charged manner. By contrast, delivery of such evidence through a defense expert in explaining the basis of the expert's opinion would be unlikely to be delivered in a prejudicially emotional manner. See *In re the Detention of Williams*, 628 N.W.2d 447, 457 (Iowa 2001) (victim testimony properly excluded under I.R.Evid. 5.403 due to potential prejudice from "distracting emotion").

Lastly, because the Defendant's experts will likely need to testify as to which, if any, of the subject facts are relevant to their opinions on the proper question in issue (sanity or insanity), having numerous fact witnesses recount the same facts would be cumulative and a waste of time.

II. Other Evidence Sought to be Excluded

The State further seeks to prohibit the defense from introducing any evidence or making any argument in the presence of the jury concerning the following:

3. Any testimony concerning the Defendant's religious beliefs, practices or habits and any evidence concerning specific instances of religious conduct by Defendant. Said evidence is irrelevant, prejudicial and designed to evoke sympathy for the Defendant and / or his family. To the extent offered by third-parties, the same would likely be improper opinions and or speculations as to the Defendant's beliefs or thoughts.

4. Any testimony concerning any statements made by Defendant offered by Defendant. Such statements are hearsay. See I.R.Evid. 5.801(d)(2)(A); also see *State v. Veal*, 564 N.W.2d 797, 808 (Iowa 1997).

WHEREFORE, the State of Iowa prays that the Court exclude or limit defense fact testimony concerning the evidence outlined in paragraphs 1 through 6 above.

Dated this 21st day of January, 2010.

Scott D. Brown AT0001213
Andrew B. Prosser AT0006497
Assistant Iowa Attorneys General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-3648
Fax: (515) 281-8894
Sbrown@ag.state.ia.us
Andrew.Prosser@iowa.gov

Greg Lievens
Butler County Attorney
P.O. Box 307
Allison, IA 50602
Phone: (319) 367-2521
FAX: (319) 367-2521
glievens@butlercoiowa.org

Original filed
Copy to: Sue Flander

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record, or the parties if unrepresented, at their respective addresses disclosed on the pleadings.

By: ____ U.S. Mail ____ Hand delivered ____ Certified Mail ____ Courthouse Mail ____ SFlander@spd.state.ia.us __ Other ____ Email to

Signature: Wendy Angell
Date: 1-27-10